

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

BARBARA SILVA,	§	
	§	
Plaintiff.	§	
	§	
V.	§	Civil Action No.
	§	EP-23-CV-0261
SUNPATH, LTD, a Delaware Limited	§	
Company and AFFORDABLE AUTO	§	
SHIELD, an unknown business entity,	§	
	§	
Defendants.	§	

**AFFORDABLE AUTO SHIELD’S MOTION TO STRIKE JOINT STIPULATION OF
DISMISSAL WITH PREJUDICE AS TO AFFORDABLE AUTO SHIELD [D.E. 44];
STRIKE ORDER DISMISSING CASE [D.E. 45] AND TO REOPEN CASE**

AFFORDABLE AUTO SHIELD (“AAS”), with the knowledge of Plaintiff, BARBARA SILVA (“Plaintiff”)¹, submits this Motion To Strike Joint Stipulation of Dismissal with Prejudice as to AAS [D.E. 44]; Strike Order Dismissing Case [D.E. 45] and Reopen Case (“Motion”) so it can proceed with Plaintiff and Sunpath LTD (“Sunpath”).

1. As this Court was already advised, Plaintiff and AAS fully resolved this matter with regard to their respective involvement.

2. Based on the foregoing, Plaintiff and AAS respectfully requested that the Court dismiss all pending claims in this case with prejudice, with each party bearing its own attorneys’ fees.

3. Undersigned’s office prepared the Joint Stipulation of Dismissal with Prejudice, but before it was sent to Plaintiff for her review, comment and approval, undersigned counsel

¹ Plaintiff has not seen this Motion prior to filing, so it could not be titled a Joint Motion. She was advised that it would be filed in an attempt to correct the inadvertent error that she advised undersigned counsel had been made.

edited the Joint Stipulation of Dismissal with Prejudice to make it clear that it was only as to AAS, and that Plaintiff reserved her right to continue this action against Sunpath.

4. Plaintiff approved the Joint Stipulation of Dismissal with Prejudice that was sent and approved the filing of same. However, she did not approve the one that was eventually and inadvertently filed with the Court.

5. Through clerical error and inadvertence, the original Joint Stipulation of Dismissal was uploaded, which was not clear that the case was to remain open as to Sunpath and Plaintiff. The only party that was supposed to be dismissed was AAS.

6. On July 17, 2024, the Court entered an Order based on the Joint Stipulation of Dismissal with Prejudice dismissing the entire case with prejudice.

7. On July 24, 2024, Plaintiff advised undersigned counsel as to this error and was rightfully angered and upset.

8. Undersigned and his office both immediately explained to Plaintiff in emails (and undersigned left Plaintiff a voicemail) explaining what happened (as set forth above) and assured her that undersigned counsel and his office would immediately take steps to get this clerical error corrected.

9. Attached to this Motion is the Joint Stipulation that Plaintiff has previously reviewed and approved for filing.

10. Undersigned counsel is hereby respectfully requesting that the case be reopened and that Plaintiff be allowed to proceed as to Sunpath as she had originally intended and that she not be prejudiced due to the clerical error, inadvertence and mistake from undersigned and his office.

WHEREFORE, undersigned counsel, with the knowledge of Plaintiff, hereby requests as follows:

- A. This case be reopened by the Clerk of the Court.
- B. The Joint Stipulation of Dismissal with Prejudice as to AAS [D.E. 44] be stricken.
- C. The Order from the Court [D.E. 45] be stricken.
- D. Undersigned counsel be allowed to upload the proper and approved Joint Stipulation of Dismissal with Prejudice as to AAS.
- E. Plaintiff be allowed to proceed as she originally and always intended against Sunpath.

Dated this 24th day of July, 2024.

	By: <u>s/ Jason S. Weiss</u> Jason S. Weiss WEISS LAW GROUP, P.A. 5531 N. University Drive, Suite 103 Coral Springs, FL 33067 Tel: (954) 573-2800 Jason@jswlawyer.com <i>Attorneys for Affordable Auto Shield</i>
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CERTIFICATE OF SERVICE

I HEREBY certify that on this 24th day of July, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which automatically gives notice to all parties of record, and to pro se parties. Additionally, Plaintiff was served Via Email at both bbrios259@gmail.com and bbrios16@outlook.com.

By: s/ Jason S. Weiss
Jason S. Weiss